

SHARON HULIHAN,) 2:09-cv-01096-ECR-RJJ
)
Plaintiff,) Order
)
vs.)
)
THE REGIONAL TRANSPORTATION)
COMMISSION OF SOUTHERN NEVADA, a)
Public Entity under State and)
Federal Statutes; LAIDLAW TRANSIT)
SERVICES, INC., a Foreign)
Corporation; FIRST TRANSIT, INC.,)
a Foreign Corporations; and DOES)
1-100, inclusive,)
)
Defendants.)

I. Background

On June 18, 2009, Plaintiff filed a Motion/Application for Leave to Proceed *in forma pauperis* (#1). On October 5, 2009, the Magistrate Judge denied (#8) Plaintiff's motion as moot because Plaintiff had already paid the filing fee and filed the Complaint (#3) on July 3, 2009.

1 On June 7, 2012, we granted Defendants' Second Motion for
2 Summary Judgment (#119), dismissing the remainder of Plaintiff's
3 claims, and the Clerk entered judgment (#129) in favor of
4 Defendants. On July 5, 2012, Plaintiff filed a Notice of Appeal
5 (#130). On July 10, 2012, the Court of Appeals for the Ninth
6 Circuit ordered Plaintiff/Appellant to either (1) file a motion in
7 the Court of Appeals to proceed in forma pauperis, (2) pay \$455.00
8 to this Court and provide proof of payment to the Court of Appeals,
9 or (3) otherwise show cause why the appeal should not be dismissed
10 for failure to prosecute. On July 27, 2012, Plaintiff filed a
11 Petition for a Certificate of Appealability (#134).

12 13 **II. Discussion**

14 Plaintiff does not need a certificate of appealability. The
15 requirement for a certificate of appealability only applies to
16 claims for habeas corpus relief arising under 28 U.S.C. § 2254 or §
17 2255. See FED. R. APP. P. 22(b); see also Dalluge v. U.S. Dep't of
18 Justice, No. C11-5037RBL, 2011 WL 1675407, at *1 (W.D. Wash. May 4,
19 2011) ("As this case was brought pursuant to 42 U.S.C. § 1983, there
20 is no requirement for a certificate of appealability."); Jenkins v.
21 Caplan, No. C 02-5603 RMW (PR), 2010 WL 3057410, at *1 (N.D. Cal.
22 Aug. 2, 2010) ("[A] Certificate of Appealability is inapplicable to
23 a § 1983 action."); Moore v. Hindmarch, No. CV 09-1461-PHX-GMS
24 (JRI), 2010 WL 3283567, at *1 (D.Ariz. Aug. 18, 2010) ("[A]
25 certificate of appealability is not required to appeal the dismissal
26 and entry of judgment in a *pro se* civil rights action brought
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1 pursuant to 42 U.S.C. § 1983."). Plaintiff's request for a
2 certificate of appealability will therefore be denied as moot.

3 Because a certificate of appealability is not required to
4 appeal the entry of judgment in a *pro se* cases arising under the
5 Americans with Disabilities Act, the Rehabilitation Act, and a state
6 law cause of action for negligence, the Court will construe
7 Plaintiff's request as a motion for certification that any appeal in
8 this action would be taken in good faith pursuant to Rule
9 24(a)(3)(A) of the Federal Rules of Appellate Procedure. After a
10 review of Plaintiff's Complaint (#3) and the Court's Orders (## 94,
11 128) granting Defendants' respective Motions for Summary Judgment
12 (## 67, 119), we will grant Plaintiff's request and certify that any
13 appeal in this matter would be taken in good faith. We note,
14 however, that if Plaintiff wishes to proceed *in forma pauperis* on
15 appeal, Plaintiff should heed the July 10, 2012 Order (#133) of the
16 Court of Appeals and file a motion in that court, not this one.

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18 **III. Conclusion**

19 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's motion for a
20 certificate of appealability (#134) is **DENIED** as moot.

21 **IT IS FURTHER ORDERED** that this Court certifies pursuant to
22 Federal Rule of Appellate Procedure 24(a)(3)(A) that any appeal of
23 the Court's judgment in this matter would be taken in good faith.

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25 DATED: August 1, 2012.

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28 UNITED STATES DISTRICT JUDGE